

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE BETH LABSON FREEMAN
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: BY: SUSAN FRANCES KNIGHT
U.S. ATTORNEY'S OFFICE
150 ALMADEN BLVD., SUITE 900
SAN JOSE, CA 95113

FOR THE DEFENDANT: BY: DANIEL LEE BARTON
NOLAN BARTON BRADFORD & OLmos, LLP
600 UNIVERSITY AVE.
PALO ALTO, CA 94301

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

1 SAN JOSE, CALIFORNIA JUNE 20, 2017
2 P R O C E E D I N G S
3 (COURT CONVENED AT 8:31 A.M.)
08:31:07 4 THE COURT: ALL RIGHT. LET'S CALL OUR FIRST CASE.
08:31:09 5 THE CLERK: CALLING CASE 15-365. UNITED STATES V.
08:31:15 6 NIMA KALBASI.
08:31:18 7 COUNSEL, PLEASE COME FORWARD AND STATE YOUR APPEARANCES.
08:31:18 8 MS. KNIGHT: GOOD MORNING, YOUR HONOR.
08:31:19 9 SUSAN KNIGHT FOR THE UNITED STATES.
08:31:21 10 THE COURT: HELLO, MS. KNIGHT.
08:31:22 11 PROBATION OFFICER: GOOD MORNING, YOUR HONOR.
08:31:24 12 INDIANA ALBANES WITH PROBATION.
08:31:25 13 THE COURT: GOOD MORNING.
08:31:26 14 MR. BARTON: DAN BARTON APPEARING WITH MR. KALBASI
08:31:28 15 WHO IS PRESENT IN COURT OUT OF CUSTODY.
08:31:30 16 GOOD MORNING, YOUR HONOR.
08:31:31 17 THE COURT: GOOD MORNING.
08:31:32 18 GOOD MORNING, MR. KALBASI.
08:31:33 19 THE DEFENDANT: GOOD MORNING.
08:31:33 20 THE COURT: ALL RIGHT. THIS IS THE TIME SET FOR
08:31:40 21 SENTENCING.
08:31:40 22 BEFORE WE GET STARTED FORMALLY, WE HAVE A NUMBER OF THINGS
08:31:43 23 TO GO OVER. MS. KNIGHT, ARE WE GOING TO BE DEALING WITH THE
08:31:46 24 RESTITUTION ISSUE TODAY?
08:31:47 25 MS. KNIGHT: YOUR HONOR, I FILED SOMETHING BRIEF LAST

08:31:49 1 NIGHT ABOUT CONTINUING IT FOR 90 DAYS IN ORDER FOR THE PARTIES
08:31:52 2 TO FURTHER EXPLORE THE INVESTIGATION COST TO TESLA.

08:31:56 3 AS WE SAID IN OUR MEMO, WE DON'T BELIEVE THAT COLLATERAL
08:32:01 4 ESTOPPEL APPLIES IN THIS MATTER, BUT IF THE COURT WISHES
08:32:04 5 FURTHER BRIEFING, WE CAN DO THAT.

08:32:06 6 THE COURT: I APPRECIATE THAT AND IT'S A BIG ISSUE,
08:32:10 7 SO I PROBABLY WOULD LIKE SOME FURTHER BRIEFING. AND THE
08:32:14 8 GOVERNMENT IS NOT REQUESTING THE FULL AMOUNT THAT TESLA HAS
08:32:18 9 ITEMIZED?

08:32:19 10 MS. KNIGHT: THAT'S CORRECT, YOUR HONOR.

08:32:21 11 ALTHOUGH TESLA BELIEVES THEY ARE ENTITLED TO THE FULL
08:32:24 12 AMOUNT, THE GOVERNMENT TOOK A CLOSER LOOK AT THE ISSUE AND
08:32:27 13 BELIEVES THAT THE ATTORNEY'S FEES SHOULD NOT BE INCLUDED.

08:32:32 14 THE COURT: AND I NEED TO UNDERSTAND THAT.

08:32:34 15 AND IS THERE SOMEONE FROM TESLA TODAY?

08:32:36 16 MS. KNIGHT: YES, CANDACE JACKMAN IS IN THE COURTROOM
08:32:39 17 AND WISHES TO MAKE A BRIEF STATEMENT.

08:32:40 18 THE COURT: GOOD MORNING, MS. JACKSON.

08:32:42 19 AND THE COURT WELCOMES ANY VICTIM TO MAKE A STATEMENT TO
08:32:44 20 THE COURT AND ACKNOWLEDGE ON THE RECORD THAT YOU ARE HERE. AND
08:32:47 21 AS I GO THROUGH, I CERTAINLY WILL WANT TO HEAR FROM YOU THIS
08:32:50 22 MORNING. SO THANK YOU FOR BEING HERE.

08:32:52 23 ALL RIGHT THEN. WITH THAT, WHY DON'T WE GET STARTED. SO
08:32:59 24 IT IS THE DESIRE OF THE PARTIES THAT I PRONOUNCE SENTENCE TODAY
08:33:03 25 AND EXCLUDE THE RESTITUTION TO A SEPARATE HEARING; IS THAT

08:33:08 1 CORRECT?

08:33:08 2 MR. BARTON: I HAVE NO OBJECTION TO THAT, YOUR HONOR.

08:33:09 3 THE COURT: OKAY. THANK YOU, MR. BARTON.

08:33:11 4 AND MR. KALBASI DOESN'T ACTUALLY LIVE LOCALLY?

08:33:14 5 MR. BARTON: HE LIVES IN TORONTO, YOUR HONOR.

08:33:16 6 THE COURT: SO HE WILL RETURN WHEN WE HAVE A HEARING

08:33:18 7 ON THE RESTITUTION ISSUE IN 90 DAYS OR WHENEVER WE SCHEDULE IT?

08:33:22 8 MR. BARTON: HE CAN, OR PERHAPS WE CAN WAIVE HIS

08:33:27 9 PRESENCE, DEPENDING ON HOW THE COURT WANTS TO HANDLE IT, OR WE

08:33:31 10 CAN HAVE HIM APPEAR TELEPHONICALLY.

08:33:34 11 THE COURT: I'M AMENABLE TO ANY OF THOSE

08:33:35 12 POSSIBILITIES. I DO NOT THINK HE PERSONALLY NEEDS TO BE HERE,

08:33:38 13 BUT I WILL LET YOU SEE HOW THAT DEVELOPS.

08:33:40 14 MR. BARTON: THANK YOU.

08:33:41 15 THE COURT: OKAY. ALL RIGHT. THEN LET ME GO

08:33:46 16 FORWARD.

08:33:46 17 LET ME SAY THAT -- WELL, FIRST OF ALL, HAVE BOTH ATTORNEYS

08:33:50 18 RECEIVED A COPY OF THE PRESENTENCE REPORT?

08:33:52 19 MS. KNIGHT: YES, YOUR HONOR.

08:33:53 20 MR. BARTON: YES, YOUR HONOR.

08:33:55 21 THE COURT: ALL RIGHT. AND ARE THERE ANY OTHER

08:33:56 22 DOCUMENTS TO SUBMIT TO THE COURT THAT I HAVEN'T ALREADY

08:33:59 23 RECEIVED?

08:33:59 24 MS. KNIGHT: NO, YOUR HONOR.

08:34:00 25 MR. BARTON: NO, YOUR HONOR.

08:34:00 1 THE COURT: OKAY. I DID RECEIVE THE STATEMENT FROM
08:34:02 2 TESLA AND I DID RECEIVE THE SENTENCING MEMORANDA, AND
08:34:12 3 MR. BARTON DID PROVIDE TO ME SIGNIFICANT ADDITIONAL
08:34:15 4 DOCUMENTATION, WHICH I GREATLY APPRECIATE. AND DOES THE
08:34:19 5 PROBATION OFFICER'S REPORT REFLECT ALL OF THE MODIFICATIONS
08:34:23 6 THAT WERE REQUESTED BY THE PARTIES THAT WERE, THAT PROBATION
08:34:26 7 AGREED TO?

08:34:27 8 MR. BARTON: YES, YOUR HONOR.

08:34:29 9 THE COURT: OKAY. ALL RIGHT.

08:34:31 10 MS. KNIGHT, DOES THE UNITED STATES ATTORNEY HAVE ANY
08:34:33 11 WITNESSES?

08:34:34 12 MS. KNIGHT: NO, YOUR HONOR. WE ONLY HAVE THE VICTIM
08:34:37 13 STATEMENT THIS MORNING.

08:34:38 14 THE COURT: OKAY. AND MR. BARTON, DO YOU HAVE ANY
08:34:40 15 WITNESSES TODAY?

08:34:41 16 MR. BARTON: NO, BUT MR. KALBASI DOES WANT TO ADDRESS
08:34:43 17 THE COURT.

08:34:44 18 THE COURT: OKAY.

08:34:47 19 ALL RIGHT. AND AT THIS POINT, WE ARE NOT LOOKING AT AN
08:34:51 20 EVIDENTIARY HEARING THIS MORNING. I GUESS POTENTIALLY ON
08:34:54 21 RESTITUTION, WE MAY NEED TO LOOK AT THAT?

08:34:57 22 MR. BARTON: CORRECT.

08:34:58 23 MS. KNIGHT: YES.

08:34:58 24 THE COURT: OKAY. THAT'S FINE.

08:35:04 25 ALL RIGHT. AND MR. BARTON, IS ARRAIGNMENT FOR JUDGMENT

08:35:06 1 WAIVED?

08:35:07 2 MR. BARTON: YES, YOUR HONOR. SO WAIVED.

08:35:09 3 THE COURT: MR. KALBASI, HAVE YOU READ AND DISCUSSED

08:35:10 4 THE PRESENTENCE REPORT WITH YOUR ATTORNEY?

08:35:13 5 THE DEFENDANT: YES, YOUR HONOR.

08:35:13 6 THE COURT: ALL RIGHT. AND YOU KNOW WHAT YOU HAVE

08:35:16 7 BEEN CONVICTED OF?

08:35:17 8 MR. BARTON: YES, YOUR HONOR.

08:35:18 9 THE COURT: ALL RIGHT. LET ME JUST GO THROUGH THAT.

08:35:20 10 YOU PLED GUILTY AND WERE CONVICTED OF COUNT 3, COMPUTER

08:35:24 11 INTRUSION IN VIOLATION OF 18 U.S. CODE SECTION 1030 SUBDIVISION

08:35:32 12 (A) (2) (C), A MISDEMEANOR.

08:35:32 13 THE CRIME CARRIES A MAXIMUM PRISON TERM OF ONE YEAR, A

08:35:36 14 MAXIMUM FINE OF \$100,000, OR TWICE THE GAIN OR LOSS, WHICHEVER

08:35:41 15 IS GREATER; MAXIMUM SUPERVISED RELEASE OF ONE YEAR, AND A

08:35:44 16 MANDATORY SPECIAL ASSESSMENT OF \$25. VICTIM RESTITUTION IS

08:35:49 17 ALSO REQUIRED.

08:35:52 18 I HAVE CALCULATED THE GUIDELINE RANGE, THE BASE OFFENSE

08:35:56 19 LEVEL IS 6, THERE IS AN INCREASE OF PLUS SIX FOR THE VALUE OF

08:36:01 20 THE LOSS. THERE IS A DECREASE OF NEGATIVE 2 FOR ACCEPTANCE OF

08:36:06 21 RESPONSIBILITY, FOR AN ADJUSTED OFFENSE LEVEL OF 10.

08:36:08 22 YOUR CRIMINAL HISTORY HAS BEEN DETERMINED TO BE ONE BASED

08:36:12 23 UPON YOUR PRIOR RECORD.

08:36:14 24 MR. BARTON, IS THERE ANY OBJECTION TO THE GUIDELINE

08:36:17 25 CALCULATION?

08:36:18 1 MR. BARTON: NO, YOUR HONOR.

08:36:20 2 THE COURT: MS. KNIGHT, ANY OBJECTION?

08:36:21 3 MS. KNIGHT: NO, YOUR HONOR.

08:36:22 4 THE COURT: ALL RIGHT.

08:36:22 5 MR. KALBASI ENTERED A PLEA PURSUANT TO RULE 11 (C) (1) (A)

08:36:27 6 AND (B), AND THUS, MAY NOT WITHDRAW HIS PLEA BASED UPON THE

08:36:30 7 COURT'S SENTENCE; IS THAT CORRECT?

08:36:31 8 MR. BARTON: YES.

08:36:32 9 THE COURT: ALL RIGHT.

08:36:34 10 I HAVE CONSIDERED THE FINDINGS AND CALCULATIONS IN THE

08:36:37 11 PRESENTENCE REPORT, AND I CALCULATE THE ADVISORY GUIDELINE

08:36:42 12 RANGE TO BE 6 TO 12 MONTHS; SUPERVISED RELEASE OF ONE YEAR; A

08:36:46 13 FINE RANGE OF \$2,000 TO \$20,000; A SPECIAL ASSESSMENT OF \$25,

08:36:51 14 AND VICTIM RESTITUTION.

08:36:54 15 ANY OBJECTIONS TO THAT CALCULATION?

08:36:55 16 MS. KNIGHT: NO, YOUR HONOR.

08:36:56 17 MR. BARTON: NO, YOUR HONOR.

08:36:57 18 THE COURT: ALL RIGHT.

08:37:02 19 I WANT TO HEAR -- I THINK PERHAPS FIRST I WOULD LIKE TO

08:37:04 20 HEAR FROM TESLA, AND THEN I WOULD LIKE TO HEAR FROM COUNSEL ON

08:37:07 21 YOUR POSITIONS.

08:37:09 22 MS. KNIGHT: OKAY.

08:37:14 23 THE COURT: GOOD MORNING. WOULD YOU STATE YOUR NAME

08:37:17 24 AGAIN.

08:37:17 25 MS. JACKMAN: YES. CANDACE JACKMAN, LITIGATION

08:37:20 1 COUNSEL WITH TESLA.

08:37:21 2 THE COURT: GOOD MORNING.

08:37:22 3 MS. JACKMAN: AND THANK YOU VERY MUCH FOR THE

08:37:23 4 OPPORTUNITY TO TALK ABOUT THE LOSS THAT THE DEFENDANT INFILCTED

08:37:26 5 ON TESLA.

08:37:28 6 NIMA KALBASI WAS A WELL COMPENSATED ENGINEER FOR TESLA AND

08:37:31 7 HE OCCUPIED A POSITION OF TRUST THAT GAVE HIM ACCESS TO

08:37:35 8 LITERALLY TROVES OF CONFIDENTIAL INFORMATION OF TESLA'S.

08:37:38 9 AS WE WOULD LATER DISCOVER, HE ABUSED THAT TRUST WHILE AT

08:37:42 10 TESLA, TAKING PICTURES OF OUR CAD DESIGNS ON HIS PHONE,

08:37:46 11 INCLUDING IMAGES OF OUR MODEL X WHICH WAS OUR HIGHLY

08:37:50 12 ANTICIPATED, AND AT THAT TIME, UNRELEASED VEHICLE THAT HAD NOT

08:37:53 13 BEEN SOLD TO THE PUBLIC.

08:37:54 14 HE WENT EVEN FURTHER AFTER HIS EMPLOYMENT ENDED, HE STOLE

08:37:57 15 HIS FORMER MANAGER'S LOGIN CREDENTIALS AND HE HACKED INTO OUR

08:38:03 16 SYSTEM'S REMOTELY. HE REVIEWED HIS FORMER MANAGER'S E-MAIL AND

08:38:07 17 DOWNLOADED FROM OUR SERVERS, AMONG OTHER THINGS, HIGHLY

08:38:10 18 SENSITIVE, PERSONAL EMPLOYEE EVALUATIONS, HIGHLY CONFIDENTIAL

08:38:13 19 REPORTS ABOUT CUSTOMER ISSUES, AND OTHER DATA.

08:38:17 20 AFTER STEALING OUR CONFIDENTIAL INFORMATION, HE WENT

08:38:20 21 FURTHER AND DISSEMINATED IT TO VARIOUS SOURCES. HE SENT

08:38:24 22 CONFIDENTIAL EMPLOYEE EVALUATIONS TO THE TESLA EMPLOYEES WHO

08:38:27 23 WERE NOT PRIVY TO THE CONTENTS OF THE EVALUATIONS. HE POSTED

08:38:30 24 TESLA'S CONFIDENTIAL CAD DESIGNS, THE LITERAL ENGINEERING

08:38:34 25 DRAWINGS, ON A PUBLIC INTERNET FORUM, AND ASKED FORUM POSTERS

08:38:37 1 IF THEY HAD ANY QUESTIONS FOR HIM.

08:38:39 2 MR. KALBASI ALSO SHARED PICTURES OF THE MODEL X PROTOTYPE,

08:38:43 3 HIGHLY CONFIDENTIAL, WITH HIS FRIENDS AND FAMILY MEMBERS.

08:38:46 4 FINALLY, HE POSTED REPORTS ABOUT CUSTOMER ISSUES AS WELL

08:38:50 5 AS PHOTOGRAPHS THAT HE TOOK FROM INSIDE OF TESLA'S FACTORY

08:38:53 6 WHICH IS A STRICTLY NO PHOTOGRAPHS, HIGHLY SENSITIVE AREA.

08:38:58 7 AFTER OUR INTERNAL INVESTIGATION POINTED TO MR. KALBASI,

08:39:02 8 WE WERE FORCED TO EXPEND ENORMOUS SUMS TO CONFIRM THE IDENTITY

08:39:05 9 OF THE SUSPECT AND TO DISCOVER THE FULL EXTENT OF HIS

08:39:09 10 WRONGDOING, AND FURTHER, TO PREVENT MORE HARM TO US.

08:39:12 11 WE RETAINED CANADIAN COUNSEL AND FILED A STATEMENT OF

08:39:15 12 CLAIM IN CANADIAN COURTS WHICH IS A PRECURSOR THAT LET US TAKE

08:39:20 13 ADVANTAGE OF A DEVICE, IT'S LIKE A CIVIL WARRANT THAT LETS YOU

08:39:23 14 FIND ADDITIONAL INFORMATION WITH COURT'S BLESSING, WITH

08:39:25 15 AUDITORS, AND WITH BASICALLY A COURT REPRESENTATIVE THERE.

08:39:31 16 THAT AUTHORIZED THE SEARCH OF MR. KALBASI'S DIGITAL

08:39:34 17 DEVICES, HIS WORKPLACE, AND A SEARCH OF HIS E-MAIL ACCOUNTS

08:39:37 18 THAT HE USED TO PERPETRATE THE CRIMES.

08:39:40 19 THESE STRETCHES COST US TREMENDOUS SUMS AND WERE

08:39:43 20 ABSOLUTELY NECESSARY TO CONFIRMING HIS IDENTITY TO FIGURING OUT

08:39:47 21 EXACTLY WHAT HE HAD DONE WRONG, AND AGAIN, PREVENTS HIM FROM

08:39:52 22 INFILCTING FURTHER HARM ON TESLA.

08:39:55 23 THE CANADIAN ORDER AUTHORIZED AN INDEPENDENT SOLICITOR,

08:39:56 24 AUDITORS AND A PRIVATE INVESTIGATOR AND AS WELL AS TESLA'S

08:39:58 25 LEGAL COUNSEL, TO PARTICIPATE IN THE EXECUTION OF THE SEARCH.

08:40:01 1 THE ORDER ALSO OBLIGATED MR. KALBASI TO HELP US OUT TO
08:40:08 2 FIGURE OUT WHERE THE DOCUMENTS WERE, TO IDENTIFY THE DOCUMENTS,
08:40:10 3 TO GIVE US HIS LOGINS AND CREDENTIALS, AND TO HELP US TRACE ALL
08:40:14 4 THE EXTENT OF HIS WRONGDOING.

08:40:16 5 AT TESLA'S SOLE EXPENSE, OUR AUDITORS, THE INDEPENDENT
08:40:20 6 SOLICITOR, AND OUR LEGAL COUNSEL EXECUTED THE CIVIL SEARCH
08:40:24 7 WARRANT, ALSO CALLED AN ANTON PILLER ORDER, AND DISCOVERED SOME
08:40:27 8 OF THE INFORMATION ABOUT HIS WRONGDOING.

08:40:30 9 BUT NOT ALL OF IT WAS DISCOVERED AT FIRST, BECAUSE
08:40:33 10 MR. KALBASI OBSTRUCTED US. HE TOLD US HE ONLY HAD A FEW E-MAIL
08:40:38 11 ACCOUNTS, HE ONLY IDENTIFIED ONE COMPUTER THAT ULTIMATELY
08:40:41 12 WASN'T EVEN HIS, AND OUR AUDITORS DETERMINED BY LOOKING AT
08:40:44 13 VARIOUS OTHER E-MAILS, PUTTING PIECES TOGETHER, THERE WERE MORE
08:40:50 14 COMPUTERS, THERE WERE MORE E-MAIL ADDRESSES, THERE WERE MORE
08:40:52 15 DEVICES THAT HE HAD USED TO PERPETRATE THE CRIMES.

08:40:57 16 OUR AUDITORS ALSO FOUND EVIDENCE THAT HE HAD DELETED TESLA
08:41:01 17 RELATED E-MAILS FROM HIS E-MAIL ACCOUNTS. AND ALL OF THIS WAS
08:41:04 18 IN VIOLATION OF A CANADIAN COURT ORDER THAT REQUIRED HIM TO
08:41:08 19 HELP.

08:41:08 20 MR. KALBASI ALSO OBSTRUCTED OUR INVESTIGATION IN OTHER
08:41:10 21 WAYS. HE REFUSED TO GIVE US THE COURTESY EVEN OF AN EXTENSION
08:41:14 22 OF TIME TO FINISH INSPECTING HIS CELL PHONE WHEN WE NEEDED A
08:41:18 23 COUPLE MORE DAYS. WE HAD TO RUN TO COURT, ASK THE COURT FOR
08:41:21 24 MORE TIME SO THAT OUR AUDITORS COULD IMAGE THE CELL PHONE.

08:41:25 25 LATER WHEN HE ANSWERED QUESTIONS TO THE INDEPENDENT

08:41:28 1 SOLICITOR AND OUR COUNSEL, HE JUST GAVE CONFLICTING AND
08:41:32 2 ULTIMATELY NOT CREDIBLE ACCOUNTS OF WHY HE HAD MISLEAD US OF
08:41:37 3 ALL THE SOURCES OF INFORMATION.

08:41:38 4 MR. KALBASI'S CRIMES CAUSED PECUNIARY HARM, AND HIS
08:41:42 5 OBSTRUCTION REALLY FORCED US TO MULTIPLY OUR COSTS IN FIGURING
08:41:46 6 OUT WHO HAD DONE THIS, WHAT EXACTLY HAD HAPPENED, WHAT WAS OUT
08:41:51 7 THERE, AND HOW WE COULD PROTECT OURSELVES FROM FURTHER
08:41:53 8 DISSEMINATION OF OUR INFORMATION ONLINE.

08:41:55 9 AND THOSE COSTS, AS DETAILED IN OUR VICTIM'S IMPACT
08:41:57 10 STATEMENT, TOTALLED NEARLY \$300,000.

08:42:00 11 THEY INCLUDED OUR FORENSIC INVESTIGATION COSTS BY ERNST &
08:42:03 12 YOUNG, \$66,000.

08:42:06 13 IN INDEPENDENT SUPERVISING SOLICITOR, ANOTHER \$50,000.

08:42:10 14 OUR OWN PRIVATE LAW FIRM, \$153,000.

08:42:13 15 PRIVATE INVESTIGATOR, TO THE TUNE OF \$18,000.

08:42:16 16 AS WELL AS TESLA'S INFORMATION SECURITY EMPLOYEE
08:42:19 17 DEPARTMENT'S OWN TIME SPENT ON THIS, WHICH TOTALS ABOUT
08:42:23 18 \$20,000.

08:42:23 19 ALL OF THESE COSTS WERE DIRECTLY AND APPROXIMATELY AND
08:42:28 20 FORESEEABLY CAUSED BY WHAT MR. KALBASI DID, AND WE DO BELIEVE
08:42:32 21 THAT ALL OF THE COSTS, INCLUDING OUR PRIVATE COUNSEL FEES, ARE
08:42:35 22 RECOVERABLE UNDER THE NINTH CIRCUIT'S PRECEDENT.

08:42:37 23 AND WE WOULD BE HAPPY TO PARTICIPATE IN ANY EVIDENTIARY
08:42:40 24 HEARING ON THOSE ISSUES, BUT I UNDERSTAND THOSE AREN'T BEFORE
08:42:42 25 THE COURT AT THIS TIME.

08:42:45 1 AGAIN, TESLA'S ABILITY TO COMPETE DEPENDS ON PROTECTING
08:42:47 2 OUR MOST SENSITIVE INFORMATION AND PUNISHING THOSE WHO WOULD
08:42:52 3 TAKE IT AND DO US HARM, PARTICULARLY WHEN THEY DO SO FROM A
08:42:55 4 POSITION OF TRUST, AS MR. KALBASI DID.

08:42:58 5 IN LIGHT OF THE CONDUCT, WE RESPECTFULLY ASK THAT THE
08:43:01 6 COURT IMPOSE JAIL TIME AS WELL AS FULL RESTITUTION OF ALL COSTS
08:43:05 7 THAT WE INCURRED IN INVESTIGATING, RESPONDING TO AND MITIGATING
08:43:09 8 OUR HARM FROM THESE VERY SERIOUS OFFENSES.

08:43:12 9 THANK YOU.

08:43:12 10 THE COURT: THANK YOU FOR MAKING YOUR PRESENTATION.

08:43:16 11 ALL RIGHT. MS. KNIGHT, LET ME HEAR FROM THE GOVERNMENT
08:43:20 12 FIRST AND THEN MR. BARTON CAN ADDRESS ALL OF THE COMMENTS THAT
08:43:24 13 HAVE BEEN MADE, AND I WILL HEAR FROM MR. KALBASI.

08:43:26 14 MS. KNIGHT: YES, YOUR HONOR.

08:43:29 15 MR. KALBASI INFILCTED SIGNIFICANT HARM ON TESLA, AND WE
08:43:34 16 BELIEVE THAT A PERIOD OF TIME OF HOME CONFINEMENT IS
08:43:40 17 APPROPRIATE. THE GUIDELINES ARE ADJUSTED OFFENSE LEVEL 10,
08:43:45 18 WHICH YIELDS A RANGE OF 6 TO 12 MONTHS.

08:43:47 19 WE ARE ASKING FOR SIX MONTHS HOME CONFINEMENT AS A
08:43:50 20 CONDITION OF FIVE YEARS PROBATION. WE KNOW HE LIVES IN CANADA,
08:43:53 21 BUT HE DOES HAVE A BROTHER THAT LIVES IN NEW YORK, HE COULD
08:43:57 22 LIVE WITH HIM FOR A PERIOD OF TIME. WE BELIEVE THIS WILL SEND
08:44:00 23 A MESSAGE TO HIM THAT HIS CONDUCT IS SERIOUS.

08:44:04 24 THE COURT: AND ON A MISDEMEANOR, I CAN IMPOSE FIVE
08:44:06 25 YEARS OF PROBATION?

08:44:07 1 MS. KNIGHT: YES, YOU CAN. THAT'S THE MAXIMUM AMOUNT

08:44:09 2 OF SUPERVISION.

08:44:10 3 THE COURT: OKAY. SO THIS WOULD BE A PROBATIONARY

08:44:13 4 SENTENCE?

08:44:13 5 MS. KNIGHT: IT WOULD BE A PROBATIONARY SENTENCE.

08:44:15 6 THE GOVERNMENT LOOKED AT THE TOTALITY OF THE CIRCUMSTANCES

08:44:18 7 IN THIS CASE, INCLUDING THE COLLATERAL CONSEQUENCES OF THIS

08:44:22 8 OFFENSE ON MR. KALBASI, IT DOESN'T MINIMIZE THE AGGRAVATED

08:44:27 9 NATURE OF THE CONDUCT, BUT WE TOOK THAT INTO CONSIDERATION WITH

08:44:29 10 OUR RECOMMENDATION FOR A HOME CONFINEMENT SENTENCE.

08:44:35 11 SO WE WOULD SUBMIT ON THAT.

08:44:36 12 THE COURT: OKAY. THANK YOU.

08:44:37 13 MR. BARTON.

08:44:38 14 MR. BARTON: THE DEFENSE CONCURS WITH THE

08:44:42 15 RECOMMENDATION OF THE PROBATION DEPARTMENT FOR A NONCUSTODIAL

08:44:47 16 SENTENCE. AND THE REASONS FOR PROBATION'S POSITION AND THE

08:44:54 17 REASONS WHY WE CONCUR ARE SET FORTH AT LENGTH IN OUR SENTENCING

08:44:57 18 MEMORANDUM.

08:44:59 19 IN SHORT, IT IS THE NATURE OF THE CONDUCT, THERE WAS A

08:45:02 20 COMPUTER INTRUSION OF THE FORMER EMPLOYER, AND MR. KALBASI HAS

08:45:07 21 ACKNOWLEDGED THAT AND COOPERATED.

08:45:12 22 THERE'S A VERY DIFFERENT ACCOUNT OF WHAT HAPPENED IN THE

08:45:14 23 CANADIAN LITIGATION. I WON'T GO INTO THAT IN DETAIL, BUT

08:45:21 24 MR. KALBASI DID NOT OBSTRUCT THAT, AND HE CONSENTED TO THE

08:45:24 25 JUDGMENT AND HE SIGNED AN AFFIDAVIT THAT ACKNOWLEDGED EXACTLY

08:45:28 1 WHAT HE DID, AND THE CANADIAN COUNSEL WHO REPRESENTED
08:45:37 2 MR. KALBASI IN THAT HAS PROVIDED THEIR VIEW OF WHAT HAPPENED,
08:45:42 3 WHICH INVOLVES MR. KALBASI COOPERATING 100 PERCENT WITH THE
08:45:47 4 EFFORTS BY TESLA AND TESLA LAWYERS TO GET THE INFORMATION THEY
08:45:53 5 WERE ENTITLED TO UNDER THE ANTON PILLER ORDER.

08:45:57 6 IF WE LOOK AT MR. KALBASI'S LIFE, HE HAS A LIFETIME OF
08:46:00 7 GOOD BEHAVIOR, WITH THE EXCEPTION OF THIS INCIDENT. HE HAS AN
08:46:05 8 IMPRESSIVE STORY OF OVERCOMING INCREDIBLE ADVERSITY FROM
08:46:09 9 IMMIGRATING TO THIS COUNTRY AS AN ADOLESCENT WITH NO ENGLISH
08:46:15 10 ABILITIES, TO MOVING TO CANADA, TO SUCCEEDING IN HIGH SCHOOL,
08:46:17 11 SUCCEEDING IN COLLEGE, RISING TO BECOME AN ACCOMPLISHED AND
08:46:20 12 CREATIVE AND PRODUCTIVE ENGINEER.

08:46:26 13 THE REMORSE THAT HE HAS, AND I THINK THAT YOU WILL SEE, IS
08:46:29 14 AUTHENTIC AND DEEP AND VERY MUCH A PART OF WHO HE IS, IS REALLY
08:46:35 15 EXTRAORDINARY AND UNUSUAL. AND I THINK THIS INCIDENT HAS
08:46:40 16 DEFINED MR. KALBASI IN A WAY THAT IS NOT AT ALL COMMON FOR
08:46:47 17 PEOPLE WHO ARE IN HIS POSITION.

08:46:51 18 THE CONSEQUENCES THAT HE HAS SUFFERED AS A RESULT OF THIS
08:46:55 19 ARE ALSO EXTRAORDINARY. HE LOST HIS JOB, HE LOST FIVE
08:47:01 20 SUBSEQUENT JOBS. HE DECIDED TO TRY TO REBUILD HIMSELF AND GET
08:47:06 21 READY FOR THE NEXT CHAPTER AND APPLY FOR GRADUATE SCHOOL. HE
08:47:10 22 WAS ADMITTED TENTATIVELY INTO THE GRADUATE SCHOOL AND THEN THAT
08:47:13 23 ADMISSION WAS RESCINDED, AND HE BELIEVES THAT, AND I THINK IT'S
08:47:16 24 ACCURATE, WAS BECAUSE OF THIS INCIDENT WHEN THE SCHOOL, AFTER
08:47:22 25 GIVING THE TENTATIVE ACCEPTANCE LETTER, DID A MORE EXTENSIVE

08:47:24 1 BACKGROUND CHECK, THEY WITHDREW THEIR ACCEPTANCE, THAT WAS TO
08:47:28 2 GO TO BUSINESS SCHOOL IN CANADA.

08:47:30 3 HE'S REALLY UNABLE, AS A RESULT OF THIS EVENT, TO WORK IN
08:47:34 4 HIS CHOSEN FIELD, EXCEPT THROUGH SELF-EMPLOYMENT, WHICH WAS
08:47:40 5 WHAT HE'S ATTEMPTING TO DO RIGHT NOW.

08:47:43 6 HE ACCEPTED RESPONSIBILITY FROM THE BEGINNING. HIS
08:47:48 7 AFFIDAVIT IN THE CANADIAN COURT DETAILS VERY SPECIFICALLY WHAT
08:47:53 8 HE DID AND ACKNOWLEDGES IT. PART OF THE JUDGMENT THAT WAS
08:47:57 9 ORDERED BY THE CANADIAN COURT AND THAT MR. KALBASI CONSENTED TO
08:48:02 10 INVOLVED VERY SPECIFIC CONDUCT PROHIBITIONS, ACCESSING TESLA'S
08:48:10 11 COMPUTERS OR COMMUNICATING WITH TESLA IN ANY WAY. HE HAS
08:48:14 12 COMPLIED WITH THAT JUDGMENT IN EVERY RESPECT. HE HAS ACCEPTED
08:48:19 13 RESPONSIBILITY. HE ALSO HAS INCREDIBLE COMMUNITY SUPPORT, AND
08:48:27 14 I THINK IS ABLE TO LAND ON HIS FEET AND MAKE SOMETHING OF
08:48:30 15 HIMSELF.

08:48:30 16 AS THE COURT CAN SEE IN THE COURTROOM TODAY IS HIS WIFE,
08:48:34 17 HIS BROTHER, HIS UNCLES, HIS AUNTS, HIS COUSINS, OTHER FAMILY
08:48:42 18 MEMBERS AND FRIENDS FROM THE BAY AREA. MANY HAVE COME FROM
08:48:45 19 TORONTO, NEW YORK, LOS ANGELES, IN ORDER TO BE HERE TO SHOW
08:48:48 20 THEM THAT THEY STAND BY HIM REGARDLESS OF HIS FAILURE ON THIS
08:48:52 21 OCCASION.

08:48:55 22 I DON'T KNOW IF THE COURT WANTS ME TO ADDRESS THE NO
08:48:58 23 COMPUTER RECOMMENDATION.

08:48:59 24 THE COURT: WELL, YES.

08:49:04 25 I WILL TELL YOU THAT I AM INCLINED TO IMPOSE IT BECAUSE IT

08:49:10 1 STILL ALLOWS THE PROBATION OFFICER TO APPROVE COMPUTER USE, AND
08:49:15 2 I WOULD AUTHORIZE THE PROBATION OFFICER TO SEEK MODIFICATION OF
08:49:21 3 THAT PROVISION IF THERE'S A YEAR OF FULL COMPLIANCE.

08:49:25 4 FIVE YEARS IS A LONG TIME TO HAVE THAT, BUT I'M FEELING
08:49:29 5 THE NEED FOR SOME MONITORING.

08:49:33 6 MR. BARTON: I WOULD ASK THE COURT TO FOLLOW THE LAW
08:49:36 7 AND NARROWLY TAILOR THE COMPUTER RESTRICTION.

08:49:40 8 THERE'S THE U.S. SUPREME COURT DECISION THAT CAME OUT
08:49:43 9 YESTERDAY IN PACKINGHAM V. NORTH CAROLINA WHICH TALKS ABOUT
08:49:47 10 CYBERSPACE ON THE INTERNET AS BEING THE MODERN PUBLIC SQUARE
08:49:51 11 AND THE IMPORTANCE OF INDIVIDUAL'S FIRST AMENDMENT RIGHTS TO
08:49:58 12 INTERACT WITH HIS COMMUNITY, FOLLOW PUBLIC EVENTS.

08:50:02 13 AND IN MR. KALBASI'S CASE, HE NOT ONLY NEEDS A COMPUTER IN
08:50:06 14 ORDER TO DO HIS WORK, IN ORDER TO BRING TO COMPLETION THE
08:50:11 15 PROJECT HE'S SET UP AS HIS SELF-EMPLOYMENT EFFORT TO CONTINUE
08:50:16 16 IN HIS CAREER AND TO DO SOMETHING OTHER THAN SHOVEL SNOW AND
08:50:20 17 GARDENING IN TORONTO, HE NEEDS IT IN ORDER TO COMMUNICATE WITH
08:50:24 18 HIS FAMILY, WHICH IS VERY EXTENDED, AND TO FOLLOW PUBLIC
08:50:32 19 EVENTS.

08:50:32 20 SO MY SUGGESTION WAS THAT THE COURT ORDER A COMPUTER
08:50:37 21 RESTRICTION NOT TO ACCESS WEBSITES WITHOUT PERMISSION FROM THE
08:50:42 22 OWNER OF THOSE WEBSITES AND NOT TO USE ANYTHING THAT HIDES HIS
08:50:49 23 IDENTITY OR THAT IS A FALSE IDENTITY TO NAVIGATE THE INTERNET.

08:50:55 24 ALTERNATIVELY, THE COURT COULD IMPOSE A RESTRICTION NOT TO
08:50:58 25 USE THE INTERNET FOR SOME PURPOSES, BUT I ASK THE COURT NOT TO

08:51:03 1 RESTRICT THE INTERNET USE AS IT GOES TO HIS WORKING. AS THE
08:51:10 2 PROBATION REPORT RECOMMENDS, HE CAN'T DO HIS JOB IF HE CAN'T
08:51:16 3 ACCESS A COMPUTER OR A CELL PHONE OR A THERMOSTAT.

08:51:23 4 THE COURT: I UNDERSTAND WHAT YOU'RE SAYING, AND I
08:51:27 5 DON'T DISAGREE WITH YOU ON THE IMPORTANCE OF A COMPUTER IN ALL
08:51:31 6 OF OUR LIVES, AND ESPECIALLY CONSIDERING MR. KALBASI'S WORK,
08:51:35 7 BUT I THINK THE KINDS OF LIMITATIONS THAT YOU ARE SUGGESTING
08:51:39 8 ARE BEST WORKED OUT IN THIS GENERAL PROBATIONARY TERM THAT THE
08:51:47 9 PROBATION OFFICER CAN SET THOSE CRITERIA AS NECESSARY FOR THE
08:51:55 10 AUTHORIZATION THAT PROBATION WOULD ALLOW.

08:51:57 11 I'M NOT REALLY IN A POSITION TO GO THROUGH THE SPECIFIC
08:52:02 12 KINDS OF RESTRICTIONS THAT YOU WOULD BE SUGGESTING AND HAVE
08:52:06 13 WHAT NEEDS TO BE A FAIRLY IN-DEPTH CONVERSATION WITH
08:52:09 14 MR. KALBASI ABOUT THE RANGE OF ACCESS THAT HE REASONABLY NEEDS
08:52:14 15 TO BE A CITIZEN AND A PRODUCTIVE WORKING ENGINEER, BUT A
08:52:20 16 PROBATION OFFICER COULD CERTAINLY DO THAT AND PUT REASONABLE
08:52:23 17 LIMITATIONS.

08:52:26 18 I WOULD EXPECT THAT THERE WILL BE AUTHORIZATION BY THE
08:52:30 19 PROBATION OFFICER WITH REASONABLE TERMS, AND THAT FRANKLY, YOU
08:52:36 20 COULD COME BACK TO COURT IF THOSE TERMS ARE NOT REASONABLE.

08:52:39 21 BUT I'M NOT IN A -- I DON'T FEEL IT'S APPROPRIATE FOR ME,
08:52:43 22 FOR THE COURT TO OUTLINE THOSE TERMS.

08:52:46 23 MR. BARTON: WELL, I NOTE THAT MR. KALBASI HAS BEEN
08:52:50 24 RELEASED SINCE AUGUST 2015 WITHOUT RESTRICTIONS ON HIS COMPUTER
08:52:55 25 USE, AND HE HAS NOT ENGAGED IN ANY MISCONDUCT ON THE COMPUTER,

08:53:03 1 AND HE HAS MADE INCREDIBLE ACCOMPLISHMENTS IN TRYING TO BUILD A
08:53:08 2 PROJECT TO SUPPORT HIMSELF. AND IF THE COURT DOESN'T CARVE OUT
08:53:13 3 THE ABILITY FOR HIM TO DO HIS WORK AND USE THE COMPUTER AT
08:53:17 4 LEAST FOR HIS WORK, THEN IT'S ESSENTIALLY A SENTENCE TO
08:53:26 5 SHOVELLING SNOW AND GARDENING IN TORONTO UNTIL THERE'S AN
08:53:33 6 ADEQUATE ACCOMMODATION.

08:53:35 7 AND I THINK IT'S APPROPRIATE FOR THE COURT TO NARROWLY
08:53:37 8 TAILOR ITS ORDER TO NOT LEAVE MR. KALBASI UNABLE TO WORK. AND
08:53:42 9 THAT IS AN EXPRESS GOAL OF PROBATION, TO ENCOURAGE SOMEBODY TO
08:53:49 10 MAINTAIN EMPLOYMENT, TO BE A PRODUCTIVE CITIZEN, TO CONTRIBUTE
08:53:55 11 TO THE COMMUNITY AND THE COMPUTER RESTRICTION WILL PROHIBIT HIM
08:53:59 12 FROM DOING THAT, ULTIMATELY.

08:54:01 13 THE COURT: OKAY. ANY FURTHER COMMENTS YOU WANT TO
08:54:10 14 MAKE BEFORE I HEAR FROM MR. KALBASI?

08:54:12 15 MR. BARTON: NO, YOUR HONOR.

08:54:13 16 THE COURT: ALL RIGHT. AND I AM INTERESTED IN
08:54:16 17 HEARING FROM MR. KALBASI.

08:54:18 18 THE DEFENDANT: THANK YOU, YOUR HONOR.

08:54:20 19 IF I MAY, I PREPARED SOMETHING.

08:54:22 20 THE COURT: SURE.

08:54:23 21 THE DEFENDANT: IT WOULD DO NO JUSTICE TO THE LAST
08:54:29 22 THREE YEARS OF MY LIFE TO STAND HERE AND APOLOGIZE, BECAUSE I
08:54:32 23 APOLOGIZE. I BELIEVE THAT THE APOLOGY WOULD COME NOWHERE NEAR
08:54:39 24 TO THE SENSE OF LOSS AND REGRET THAT I CONSTANTLY FEEL.

08:54:43 25 I WISH TO APOLOGIZE NOT JUST TO VICTIMS OF MY ACTIONS LIKE

08:54:48 1 MY EX-BOSS, AND THOSE AFFECTED AT TESLA, BUT ALSO TO MY WIFE,
08:54:52 2 MY PARENTS, MY FAMILY AND FRIENDS WHO ARE HERE TODAY, AND TO
08:54:56 3 THOSE THAT SUPPORT ME REGARDLESS OF MY MISTAKE. I WILL NEVER
08:54:59 4 EVER LET THEM DOWN AGAIN.

08:55:01 5 AND I HOPE YOU CAN SEE THAT THIS MEANS EVERYTHING TO ME.
08:55:05 6 THAT THESE PEOPLE HAVE KEPT ME ALIVE FOR THE PAST THREE YEARS.
08:55:08 7 IT HAS BEEN NOT EASY FOR THEM. AND I OWE THEM EVERYTHING.

08:55:12 8 I CAN ENVISION A DIFFERENT VERSION OF ME, ONE WHERE I'M
08:55:16 9 LIVING IN A WORLD THAT IS BY NO MEANS EXTRAORDINARY. IN FACT,
08:55:20 10 IT'S QUITE BORING AND MUNDANE TO MANY. AND YET IT IS SO
08:55:27 11 IMPORTANT TO ME. THE LIFE I'M TALKING ABOUT IS THE
08:55:29 12 CONTINUATION OF MY LIFE AS IT WERE THREE YEARS AGO, WITHOUT THE
08:55:33 13 MISTAKE THAT HAS LEAD ME HERE BEFORE YOU TODAY.

08:55:36 14 IT IS A LIFE OF CONTINUING TO LIVE BY MY MORAL STANDARDS,
08:55:41 15 OF NOT SUCCUMBING TO PETTY AND IMMATURE TEMPTATION TO SEEK
08:55:45 16 REVENGE WHEN I LOST MY DREAM JOB.

08:55:48 17 I WENT FROM A 14-YEAR OLD IMMIGRANT BOY WHO DIDN'T SPEAK
08:55:52 18 ENGLISH, TO THE SUCCESSFUL ENGINEER WHO GOT THE CHANCE TO WORK
08:55:54 19 AT TESLA, HIS DREAM COMPANY. HAD I BEEN WISER, I WOULD STILL
08:55:58 20 BE IN MY FIELD WORKING TO MAKE A DIFFERENCE. I WOULD STILL
08:56:01 21 HAVE THE HOUSE I BUILT, SO MUCH OF IT WITH MY OWN TWO HANDS. I
08:56:06 22 WOULD HAVE BEEN ABLE TO KEEP MY SICK MOTHER FROM LEAVING TO A
08:56:11 23 HOSTILE ENVIRONMENT IN IRAN BECAUSE OF THAT.

08:56:15 24 I WOULD HAVE BEEN ABLE TO DO RIGHT BY MY WIFE AND SUPPORT
08:56:19 25 HER THROUGH THE LAST THREE YEARS OF HER SCHOOL, INSTEAD OF HER

08:56:23 1 SUPPORTING ME THROUGH HER STUDENT LOANS. AND ABOVE ALL, I
08:56:26 2 COULD STILL HOLD MY HEAD UP IN PRIDE. AND I WOULD BE SOMEONE
08:56:30 3 MY FRIENDS AND FAMILY COULD BE PROUD OF, AND THAT COULD HAVE
08:56:33 4 BEEN ME.

08:56:36 5 THAT'S NOT THE REALITY I HAVE NOW. NOW I JUST HOPE I
08:56:39 6 REMAIN INVISIBLE ENOUGH THAT POTENTIAL EMPLOYERS AND NEW
08:56:42 7 COWORKERS AND OTHERS JUST DON'T BOTHER TO GOOGLE ME. I'VE LOST
08:56:48 8 EVERYTHING I HAD FINANCIALLY, AND I'M IN A HOLE SO DEEP, I WILL
08:56:52 9 SPEND THE REST OF MY LIFE TRYING TO DIG MYSELF OUT OF IT.

08:56:54 10 I HAVE DAMAGED MY CREDIBILITY AS AN ENGINEER, IN THE ONLY
08:56:59 11 PROFESSION I KNOW AND TRULY LOVE, COMPOUNDING THE FINANCIAL
08:57:03 12 PROBLEMS THAT I FACE.

08:57:04 13 THIS MORAL FAILING OF MINE AND ALL THE CONSEQUENCES, HAVE
08:57:09 14 MADE ME UNDERSTAND THAT FOREVER -- I AM FOREVER DEFINED BY MY
08:57:13 15 ACTIONS.

08:57:15 16 AND I HAVE TAKEN FROM THE START, RESPONSIBILITY FOR THESE
08:57:18 17 ACTIONS. FROM THE DAY THE TEAM OF LAWYERS AND INVESTIGATORS
08:57:23 18 POURED INTO MY WORKPLACE, I HAVE DONE WHAT I BELIEVE TO BE THE
08:57:26 19 RIGHT THING.

08:57:28 20 I COMPLIED WITH EVERY REQUEST TESLA MADE IN THE CIVIL
08:57:33 21 CASE. I AGREED TO THE CONSENT JUDGMENT BY THE ONTARIO COURT.
08:57:37 22 I AGREED TO THE PLEA AGREEMENT IN THIS CRIMINAL CASE. I SIGNED
08:57:39 23 AN AFFIDAVIT COMPOSED BY TESLA'S LAWYERS REQUIRING ME TO PAY
08:57:44 24 \$15,000, EVEN THOUGH I HAD NO JOB, I JUST BORROWED YET MORE
08:57:48 25 MONEY TO DO THAT.

08:57:49 1 I MADE COUNTLESS TRIPS ACROSS THE U.S./CANADIAN BORDER TO
08:57:53 2 ATTEND THIS COURT AND OTHER MEETINGS, AND EACH TIME I SPENT
08:57:56 3 HOURS BEING QUESTIONED BY CUSTOMS AGENTS BECAUSE I AM NOW
08:57:59 4 CONSIDERED A THREAT BECAUSE I WAS FIRST ARRESTED AT THE BORDER.

08:58:04 5 I ACCEPT AND UNDERSTAND THIS IS ALL PART OF PAYING THE
08:58:07 6 PRICE FOR MY MISTAKE, I DON'T WISH FOR ANYONE TO FEEL SORRY FOR
08:58:12 7 ME, I AM SIMPLY STATING MY TRUTH AND HOPING THAT THE COURT CAN
08:58:16 8 SEE THAT THE ALTERNATE VERSION OF ME IS NOT AN IDLE FANTASY, IT
08:58:20 9 IS STILL POSSIBLE.

08:58:21 10 AND DESPITE MY VIOLATING THE TRUST OF MY FORMER EMPLOYER,
08:58:25 11 I'M STILL CAPABLE OF PRODUCING GOOD IN THIS WORLD. GIVEN THE
08:58:29 12 CHANCE, I WILL DO EVERYTHING IN MY POWER TO MAKE THIS ALTERNATE
08:58:32 13 VERSION OF ME A REALITY. MOST OF ALL, I'M ANXIOUS TO REDEEM
08:58:36 14 MYSELF IN FRONT OF MY WIFE, MY FAMILY AND MY COMMUNITY. AND I
08:58:40 15 HOPE YOU WILL GIVE ME THE OPPORTUNITY TO START THIS TODAY.

08:58:43 16 THANK YOU.

08:58:43 17 THE COURT: THANK YOU.

08:58:44 18 ANYTHING ELSE, MR. BARTON?

08:58:47 19 MR. BARTON: NO, YOUR HONOR.

08:58:48 20 THE COURT: DOES THE PROBATION OFFICER HAVE ANYTHING
08:58:50 21 TO SAY?

08:58:50 22 PROBATION OFFICER: YES, YOUR HONOR.

08:58:52 23 I JUST WANTED TO CLARIFY THAT THE SPECIAL CONDITION IS
08:58:55 24 THAT IT'S NOT THAT -- THE SPECIAL CONDITION FOR THE COMPUTER
08:59:00 25 MONITORING IS NOT THAT MR. KALBASI CANNOT OWN A COMPUTER, IT'S

08:59:04 1 JUST THAT HE WOULD BE MONITORED.

08:59:06 2 ALSO, I UNDERSTAND THAT MR. KALBASI LIVES IN TORONTO,

08:59:11 3 CANADA, SO IN ORDER FOR A CONDITION LIKE THAT TO BE IMPOSED, HE

08:59:15 4 WOULD ACTUALLY HAVE TO LIVE IN THE UNITED STATES.

08:59:20 5 I'M NOT SURE IF IT'S POSSIBLE FOR HIM TO.

08:59:24 6 THE COURT: I'M LOOKING AT CONDITION NUMBER 2.

08:59:28 7 PROBATION OFFICER: YES.

08:59:29 8 THE COURT: IT DOESN'T SAY ANYTHING -- IT DOESN'T

08:59:35 9 DIRECTLY SAY ANYTHING ABOUT MONITORING.

08:59:39 10 PROBATION OFFICER: I'M SORRY, CONDITION NUMBER 3.

08:59:43 11 IT'S A COMPUTER AND INTERNET MONITORING PROGRAM.

08:59:56 12 THE COURT: WELL, IT SEEMS LIKE NUMBER 3 IS THE ONE

08:59:58 13 THAT MR. BARTON WOULD LIKE ME TO ELIMINATE.

09:00:00 14 MR. BARTON: NUMBER 2 IS THE ONE THAT'S THE PROBLEM.

09:00:02 15 THE COURT: BUT NUMBER 3 IS GOING TO REQUIRE HIM TO

09:00:04 16 MOVE TO THE UNITED STATES IN ORDER TO BE MONITORED. I DON'T

09:00:07 17 THINK THAT WAS PART OF MR. KALBASI'S PLAN, WAS IT?

09:00:09 18 MR. BARTON: NO.

09:00:14 19 THE COURT: THAT'S WHAT I'M JUST BEING TOLD, CORRECT.

09:00:16 20 PROBATION OFFICER: IN ORDER FOR NUMBER 2 OR NUMBER 3

09:00:18 21 TO APPLY, HE WOULD HAVE TO LIVE IN THE UNITED STATES.

09:00:20 22 THE COURT: I DON'T UNDERSTAND WHY HE WOULD HAVE TO

09:00:22 23 LIVE IN THE U.S. FOR NUMBER 2, BECAUSE THAT JUST SAYS HE CAN'T

09:00:26 24 POSSESS OR USE WITHOUT PRIOR APPROVAL.

09:00:32 25 NUMBER 3 TALKS ABOUT ENROLLING IN THE PROGRAM, AND I

09:00:35 1 UNDERSTAND THAT THAT CAN ONLY BE DONE FROM THE U.S., BUT I
09:00:39 2 DON'T UNDERSTAND WHY NUMBER 2 CAN'T BE DONE FROM CANADA.

09:00:43 3 PROBATION OFFICER: ACTUALLY, YOU ARE CORRECT,

09:00:44 4 YOUR HONOR.

09:00:45 5 IT WOULD BE IF HE WERE TO BE PLACED ON PROBATION, HE WOULD
09:00:49 6 HAVE -- IN ORDER FOR US TO MONITOR HIM, HE WOULD HAVE TO BE IN
09:00:52 7 THE UNITED STATES.

09:00:52 8 THE COURT: TO MONITOR HIM GENERALLY.

09:00:54 9 PROBATION OFFICER: YES, YOUR HONOR.

09:00:56 10 THE COURT: WAS THAT UNDERSTOOD?

09:01:01 11 MR. BARTON: NO, IT WASN'T. MR. KALBASI'S LIFE IS IN
09:01:07 12 TORONTO.

09:01:08 13 THE COURT: WOULD HE EVEN BE ABLE TO LIVE IN THE
09:01:10 14 U.S.?

09:01:10 15 MR. BARTON: HE IS A LEGAL PERMANENT RESIDENT OF THE
09:01:13 16 UNITED STATES. HIS FAMILY, HIS BUSINESS, HIS WIFE, EVERYTHING
09:01:19 17 IS IN TORONTO.

09:01:25 18 AND I DON'T WANT TO JUMP AHEAD TO THE ISSUE OF, IF THE
09:01:28 19 COURT WERE TO IMPOSE SOME TIME OF HOME DETENTION, I DON'T
09:01:34 20 UNDERSTAND WHY THAT COULDN'T BE ACCOMPLISHED WITH ADEQUATE
09:01:42 21 TECHNOLOGY LIVING IN TORONTO, PEOPLE USE GPS MONITORING WHICH
09:01:46 22 IS AN INTERNET-BASED TECHNOLOGY.

09:01:48 23 THE COURT: I'M MORE CONCERNED WITH THE FIVE YEARS OF
09:01:51 24 PROBATION. I'M BEING TOLD HE HAS TO LIVE IN THE U.S. FOR THE
09:01:55 25 NEXT FIVE YEARS.

09:01:56 1 PROBATION OFFICER: YES, YOUR HONOR. IN ORDER FOR

09:01:58 2 THAT TO BE --

09:01:59 3 THE COURT: I MEAN, THAT'S OUTSIDE OF WHAT I

09:02:01 4 UNDERSTOOD, BUT IT'S CLEARLY OUTSIDE OF WHAT YOU UNDERSTOOD.

09:02:04 5 MR. BARTON: I DID NOT UNDERSTAND THAT ANYBODY WAS

09:02:07 6 SUGGESTING THAT MR. KALBASI BE REQUIRED TO LIVE IN THE

09:02:09 7 UNITED STATES. HE DOESN'T LIVE HERE.

09:02:16 8 THE COURT: THAT'S BEEN CLEAR TO ME THE WHOLE TIME

09:02:18 9 THAT HE DOESN'T LIVE HERE.

09:02:20 10 SO, I MEAN, I CERTAINLY RESPECT THE LIMITATIONS THAT THE

09:02:24 11 PROBATION DEPARTMENT WOULD HAVE IN MONITORING, EVEN IF I

09:02:27 12 EXCLUDE NUMBER 3, BUT YOU ARE TALKING ABOUT GENERAL MONITORING

09:02:32 13 OF A PROBATIONER.

09:02:35 14 PROBATION OFFICER: YOUR HONOR, THE RECOMMENDATION

09:02:36 15 WAS THAT IF MR. KALBASI WERE TO REMAIN IN THE UNITED STATES, HE

09:02:41 16 WOULD GET THE FIVE YEARS PROBATION.

09:02:44 17 THE COURT: AND IF NOT, HE SHOULD HAVE A PRISON

09:02:48 18 SENTENCE AND BE DONE WITH IT.

09:02:50 19 PROBATION OFFICER: PROBATION DIDN'T RECOMMEND A JAIL

09:02:52 20 SENTENCE.

09:02:52 21 THE COURT: I KNOW THAT. SO YOU LEFT ME HANGING

09:02:56 22 THERE. IF HE DOESN'T LIVE IN THE U.S., WHAT DO I DO?

09:03:00 23 PROBATION OFFICER: AN OPTION, YOUR HONOR, WOULD BE

09:03:04 24 THAT MR. KALBASI COULD SUBMIT MONTHLY WORKSHEETS TO THE

09:03:08 25 PROBATION OFFICE FROM CANADA.

09:03:11 1 THE COURT: YOU WOULD BE WILLING TO MONITOR HIM THAT

09:03:13 2 WAY?

09:03:13 3 PROBATION OFFICER: YES, YOUR HONOR.

09:03:14 4 THE COURT: I REALLY APPRECIATE THAT.

09:03:15 5 MS. KNIGHT: YOUR HONOR, IN PRIOR CASES, THIS WAS

09:03:17 6 YEARS AGO, I'VE HAD DEFENDANTS LIVING OUTSIDE THE UNITED STATES

09:03:20 7 WHO PHONE IN, THEY ARE MORE ON A TIGHTER LEASH WITH MONTHLY

09:03:23 8 REPORTS, WEEKLY PHONE CALLS, CONFIRMATION OF COMMUNITY SERVICE,

09:03:27 9 I'VE HAD CRAFTING OF A SENTENCE --

09:03:31 10 THE COURT: GOOD. OKAY. I THINK MAYBE WE'VE WORKED

09:03:34 11 OUR WAY THROUGH THAT. THANK YOU.

09:03:38 12 BUT NUMBER 3 COULDN'T BE ACTUALLY PHYSICALLY BE DONE IF HE

09:03:44 13 LIVED IN CANADA.

09:03:46 14 PROBATION OFFICER: THAT'S CORRECT, YOUR HONOR.

09:03:47 15 THE COURT: OKAY. WELL, I KNOW HOW TO HANDLE THAT.

09:03:57 16 ALL RIGHT. THIS CASE IS VERY TROUBLING BECAUSE THE AMOUNT

09:04:00 17 OF HARM WAS EXTRAORDINARY. THE DEGREE OF, AND MR. KALBASI, YOU

09:04:09 18 SAID IT BEST YOURSELF, IMMATURITY, BAD JUDGMENT,

09:04:13 19 SHORTSIGHTEDNESS, WAS PROFOUND IN THIS CASE, ESPECIALLY FROM A

09:04:20 20 PERSON OF YOUR BACKGROUND AND EDUCATION, AND WITH THE KIND OF

09:04:23 21 SUPPORT AND UPBRINGING THAT YOU'VE HAD OF A STRONG FAMILY.

09:04:27 22 I GREATLY APPRECIATE ALL OF THE LETTERS OF SUPPORT THAT I

09:04:30 23 WAS ABLE TO READ AND THANK THE FAMILY AND FRIENDS AND BUSINESS

09:04:35 24 ASSOCIATES WHO TOOK THE TIME AND EXPOSED THEMSELVES TO THE

09:04:38 25 COURT TO PREPARE THOSE LETTERS. THEY MEAN A GREAT DEAL.

09:04:46 1 AND I AM VERY MOVED BY YOUR RECITATION OF THE CONSEQUENCES
09:04:55 2 THAT YOU HAVE SUFFERED SINCE THIS EVENT AND CERTAINLY NEED TO
09:05:00 3 CONSIDER THIS IS A MISDEMEANOR AND THERE WAS NO VIOLENCE
09:05:05 4 INVOLVED IN IT. AND THOSE ARE IMPORTANT CONSIDERATIONS FOR ME.
09:05:10 5 I HAVE CONSIDERED THE 3553(A) FACTORS IN ORDER TO ENSURE A
09:05:16 6 SENTENCE SUFFICIENT BUT NOT GREATER THAN NECESSARY TO COMPLY
09:05:19 7 WITH THE PURPOSES OF SENTENCING.
09:05:21 8 I HAVE CONSIDERED THE NATURE AND CIRCUMSTANCES OF THE
09:05:24 9 CRIME, INCLUDING THAT IT WAS A SERIOUS OFFENSE, IT DID INVOLVE
09:05:28 10 AN ABUSE OF A POSITION OF TRUST. AND ALTHOUGH IT WAS A
09:05:32 11 MISDEMEANOR, IT DID INVOLVE OBTAINING A SUPERVISOR'S PASSWORD
09:05:40 12 AND ACCESSING ACCOUNT INFORMATION AFTER TERMINATION FROM TESLA
09:05:42 13 AND DISTRIBUTION OF TRADE SECRET, HIGHLY CONFIDENTIAL
09:05:47 14 INFORMATION ABOUT TESLA, KNOWN TO HAVE BEEN OF GREAT VALUE TO
09:05:50 15 TESLA.
09:05:51 16 MR. BARTON: YOUR HONOR, I DON'T WANT TO INTERRUPT,
09:05:53 17 BUT I DON'T THINK THERE IS ANY ALLEGATION OF TRADE SECRETS
09:05:56 18 BEING INVOLVED.
09:05:57 19 THE COURT: NO, JUST CONFIDENTIAL.
09:05:58 20 MR. BARTON: IT'S CONFIDENTIAL NON-TRADE SECRET
09:06:00 21 INFORMATION.
09:06:01 22 MS. KNIGHT: THAT'S, THAT'S CORRECT.
09:06:03 23 THE COURT: LET ME MODIFY THAT.
09:06:05 24 OF CONFIDENTIAL INFORMATION. AND EXPOSING OR PROVIDING TO
09:06:10 25 OTHER EMPLOYEES, INFORMATION THAT TESLA MAINTAINED IN A

09:06:13 1 CONFIDENTIAL WAY.

09:06:22 2 THIS CONDUCT CAUSED TESLA TO EXPEND TIME AND MONEY TO

09:06:25 3 INVESTIGATE THE THEFT AND DAMAGED MR. KALBASI'S FORMER

09:06:33 4 EMPLOYER. AND ALTHOUGH I FIND THIS TO BE SERIOUS, IT'S A

09:06:37 5 SERIOUS MISDEMEANOR, IT'S NOT A SERIOUS FELONY, AND I'M NOT

09:06:42 6 CROSSING THE LINE, AND I HAVE TO RECOGNIZE THAT THIS IS THE

09:06:45 7 CRIME OF CONVICTION, IT IS A MISDEMEANOR.

09:06:55 8 I'VE ALSO CONSIDERED MR. KALBASI'S PERSONAL

09:06:57 9 CHARACTERISTICS, HE'S A YOUNG MAN, HE'S HIGHLY EDUCATED, HE HAS

09:07:01 10 AN EXCELLENT WORK HISTORY, A HISTORY OF GREAT SUCCESS IN HIS

09:07:04 11 PROFESSION, WHICH HAS BEEN THROWN OFF COURSE, MAYBE FATALLY, BY

09:07:10 12 HIS OWN MISTAKES. I NOTE HIS ACKNOWLEDGEMENT OF RESPONSIBILITY

09:07:15 13 FOR HIS OWN ACTIONS.

09:07:21 14 I ALSO NOTE MR. KALBASI'S PERSONAL STRUGGLES, HAVING

09:07:27 15 IMMIGRATED FROM IRAN WITH HIS FAMILY. HIS FAMILY WAS PUNISHED

09:07:30 16 FOR POLITICAL ACTIVITIES, HIS FAMILY AND MR. KALBASI HAVE

09:07:34 17 OVERCOME THOSE TERRIBLE CIRCUMSTANCES AND MR. KALBASI HAS

09:07:38 18 SEIZED THE OPPORTUNITY TO BECOME HIGHLY EDUCATED AND

09:07:43 19 PRODUCTIVE.

09:07:43 20 HE IS MARRIED, HAS MANY FRIENDS AND RELATIVES AND

09:07:47 21 ASSOCIATES WHO SPEAK LIE HE OF HIS CHARACTER. HE'S TAKING CARE

09:07:51 22 OF HIS PARENTS WHEN HE COULD. HE'S SETTLED THE CIVIL LAWSUIT

09:07:56 23 FILED BY TESLA IN THIS MATTER. ALTHOUGH TESLA SHOULDN'T HAVE

09:08:00 24 HAD TO FILE THAT IN THE FIRST PLACE, I CERTAINLY RECOGNIZE

09:08:03 25 THAT.

09:08:04 1 AND I THINK MOST IMPORTANLTY, I'M TAKING INTO ACCOUNT THE
09:08:10 2 SERIOUS CONSEQUENCES THAT MR. KALBASI HAS ALREADY SUFFERED
09:08:14 3 BASED ON HIS WRONGDOING, LOSING ONE'S JOB IS ONE THING, THAT
09:08:19 4 HAS NOTHING TO DO HERE, REALLY THESE THINGS CAME AFTERWARD.
09:08:23 5 AND AS A 30-YEAR OLD, IT MIGHT BE HARD TO SEE THAT LOSING A JOB
09:08:26 6 IS NOT THE END OF THE WORLD, COMMITTING A CRIME COMES PRETTY
09:08:30 7 CLOSE, PROFESSIONALLY, TO THE END OF THE WORLD FOR THAT
09:08:32 8 PROFESSION.

09:08:35 9 AND YOU HAVE, BY YOUR ACTS, POISONED YOUR FUTURE CAREER IN
09:08:39 10 WAYS THAT WILL BE WITH YOU FOR A LONG TIME. YOU'VE LOST YOUR
09:08:47 11 JOB, YOU'VE LOST YOUR HOME, YOU'VE LOST FUTURE EMPLOYMENT
09:08:50 12 POSSIBILITIES.

09:08:52 13 YOU HAVE ACCEPTED RESPONSIBILITY FOR YOUR OWN ACTIONS,
09:08:57 14 YOU'VE CONTINUED TO SHOW RESPONSIBILITY FOR CARING FOR YOUR
09:09:01 15 WIFE AND FOR YOUR PARENTS. YOU'VE CONTINUED TO ENROLL IN THE
09:09:08 16 COMMUNITY AS A PERSON WHO GENEROUSLY HELPS YOUR NEIGHBORS.

09:09:15 17 IT IS MY OBLIGATION TO CONSIDER A SENTENCE THAT IS
09:09:17 18 SUFFICIENT BUT NOT GREATER THAN NECESSARY TO COMPLY WITH THE
09:09:19 19 PURPOSES OF SECTION 3553.

09:09:23 20 IN MY VIEW, THE GUIDELINE RANGE IS TOO HARSH IN THIS CASE.
09:09:29 21 I DO NOT THINK THAT ANY PURPOSE IS SERVED BY A SENTENCE IN
09:09:33 22 PRISON AND I AM NOT GOING TO IMPOSE A PRISON SENTENCE. IT IS
09:09:40 23 NOT RECOMMENDED BY THE GOVERNMENT, IT IS NOT RECOMMENDED BY
09:09:43 24 PROBATION. AND I HAVE ALSO CONSIDERED, SO I WILL VARY FROM THE
09:09:47 25 GUIDELINE RANGE.

09:09:49 1 IN CONSIDERING THE GOVERNMENT'S REQUEST FOR SIX MONTHS OF
09:09:52 2 HOME DETENTION, WITHIN A PROBATIONARY SENTENCE, I HAVE
09:09:58 3 CONSIDERED THAT, AND UNDER THE CIRCUMSTANCES WHERE I WILL ORDER
09:10:05 4 THE PROPER AMOUNT OF RESTITUTION AT SOME LATER DATE, I THINK IT
09:10:11 5 IS IMPORTANT THAT MR. KALBASI HAVE THE OPPORTUNITY TO WORK WHEN
09:10:14 6 HE CAN.
09:10:15 7 AND I WANT TO MAKE SURE THAT THIS SENTENCE DOESN'T
09:10:21 8 UNNECESSARILY RESTRICT HIS ABILITY TO GAIN EMPLOYMENT. I DON'T
09:10:25 9 ACTUALLY SEE THAT ANY DETERRENT EFFECT WOULD BE RECOGNIZED BY
09:10:31 10 HOME DETENTION IN THIS CASE. AND SO UNDER THESE CIRCUMSTANCES,
09:10:36 11 I WILL ADOPT THE RECOMMENDATION OF THE PROBATION DEPARTMENT AND
09:10:40 12 IMPOSE FIVE YEARS OF PROBATION.
09:10:44 13 AND I WILL SAY, IT'S A CLOSE CALL ON THE HOME DETENTION.
09:10:47 14 I RECOGNIZE THAT TESLA PROPERLY CALLS OUT FOR PUNISHMENT TO
09:10:53 15 DETER OTHERS AND TO GET SOME VINDICATION BEYOND RESTITUTION IN
09:10:59 16 THIS MATTER, AND I HAVE CONSIDERED THAT CAREFULLY, BUT IT IS MY
09:11:04 17 DETERMINATION THAT HOME DETENTION IS NOT NECESSARY TO SATISFY
09:11:07 18 THE GOALS OF THE SENTENCING IN THIS CASE.
09:11:15 19 I WILL MODIFY THE TERMS OF PROBATION, MR. BARTON. I AM
09:11:23 20 GOING TO IMPOSE CONDITION NUMBER 2, BUT I WILL ADD TO IT THAT
09:11:28 21 PROBATION IS DIRECTED TO CONSIDER APPROVING COMPUTER USE AND
09:11:37 22 POSSESSION FOR WORK WITH REASONABLE RESTRICTIONS.
09:11:43 23 I WILL NOT IMPOSE NUMBER 3 BECAUSE I AM NOT GOING TO
09:11:47 24 REQUIRE MR. KALBASI TO LIVE IN THE UNITED STATES. AND I
09:11:52 25 WILL -- AND PROBATION WILL DEVELOP THE PROPER MEANS TO PROPERLY

09:11:58 1 SUPERVISE THE PROBATION, AND KNOWING THAT YOU WILL BE LIVING IN
09:12:03 2 TORONTO.

09:12:05 3 AND SO WITH THAT, AND KNOWING THAT RESTITUTION WILL BE
09:12:09 4 ORDERED BUT WE ARE PUTTING OFF THE AMOUNT FOR FURTHER REVIEW,
09:12:17 5 AND NO FINE WILL BE IMPOSED IN THIS CASE BASED ON INABILITY TO
09:12:23 6 PAY.

09:12:28 7 ALL RIGHT. WITH THAT THEN, PURSUANT TO THE SENTENCING
09:12:36 8 REFORM ACT OF 1984, IT IS THE JUDGMENT OF THE COURT THAT NIMA
09:12:41 9 KALBASI IS HEREBY PLACED ON PROBATION FOR A PERIOD OF FIVE
09:12:44 10 YEARS.

09:12:46 11 THE COURT RECOGNIZES THAT MR. KALBASI IS LIKELY TO BE
09:12:50 12 RESIDING IN CANADA AND WILL NOT BE IN THE UNITED STATES FOR
09:12:56 13 DIRECT SUPERVISION. THE PROBATION DEPARTMENT IS ORDERED TO
09:13:01 14 DEVELOP AN APPROPRIATE SUPERVISION METHODOLOGY CONSISTENT WITH
09:13:04 15 MR. KALBASI'S RESIDENCE.

09:13:06 16 IF WITHIN FIVE YEARS, THE DEFENDANT RETURNS TO THIS
09:13:11 17 COUNTRY LEGALLY, THE DEFENDANT SHALL BE SUBJECT TO THE
09:13:13 18 CONDITIONS OF PROBATION AS WOULD NORMALLY BE APPLIED FOR
09:13:17 19 SOMEONE LIVING HERE, BUT HE WILL BE SUBJECT TO PROBATION WHILE
09:13:20 20 HE IS IN CANADA. AND UPON RETURNING TO THE UNITED STATES,
09:13:24 21 SHALL REPORT TO THE NEAREST PROBATION OFFICE WITHIN 72 HOURS OF
09:13:29 22 REENTRY.

09:13:35 23 WHILE ON PROBATION, THE DEFENDANT SHALL NOT COMMIT ANOTHER
09:13:38 24 FEDERAL, STATE OR LOCAL CRIME, AND SHALL COMPLY WITH THE
09:13:41 25 STANDARD CONDITIONS THAT HAVE BEEN ADOPTED BY THE COURT, EXCEPT

09:13:45 1 THAT THE MANDATORY DRUG TESTING PROVISION IS SUSPENDED, AND THE
09:13:50 2 DEFENDANT SHALL COMPLY WITH THE FOLLOWING CONDITIONS:
09:13:52 3 THE DEFENDANT SHALL PAY ANY RESTITUTION AND SPECIAL
09:13:56 4 ASSESSMENT THAT IS IMPOSED BY THIS JUDGMENT AND THAT REMAINS
09:13:59 5 UNPAID AT THE COMMENCEMENT OF THE TERM OF PROBATION.
09:14:02 6 THE DEFENDANT SHALL NOT POSSESS OR USE A COMPUTER WITHOUT
09:14:05 7 THE PRIOR APPROVAL OF THE PROBATION OFFICER.
09:14:09 8 "COMPUTER" INCLUDES ANY ELECTRONIC DEVICE CAPABLE OF
09:14:13 9 ACCESSING THE INTERNET OR PROCESSING OR STORING DATA AS
09:14:17 10 DESCRIBED IN 18 U.S. CODE SECTION 1030(C), SUBSECTION 1,
09:14:24 11 INCLUDING CELL PHONES AND ALL PERIPHERAL DEVICES.
09:14:28 12 IT IS THE COURT'S ORDER TO THE PROBATION DEPARTMENT TO
09:14:32 13 ALLOW COMPUTER USE AND POSSESSION FOR EMPLOYMENT PURPOSES WITH
09:14:37 14 REASONABLE RESTRICTIONS AS DETERMINED BY THE PROBATION
09:14:40 15 DEPARTMENT.
09:14:41 16 THE DEFENDANT SHALL CONSENT TO THE PROBATION OFFICER
09:14:43 17 CONDUCTING PERIODIC UNANNOUNCED EXAMINATION OF HIS COMPUTER
09:14:47 18 EQUIPMENT, WHICH MAY INCLUDE RETRIEVAL AND COPYING OF ALL DATA
09:14:51 19 FROM COMPUTERS AND ANY PERIPHERAL DEVICES, TO ENSURE COMPLIANCE
09:14:56 20 WITH THAT CONDITION AND/OR REMOVAL OF ANY SUCH EQUIPMENT FOR
09:15:00 21 THE PURPOSE OF CONDUCTING A MORE THOROUGH INSPECTION.
09:15:03 22 THE DEFENDANT SHALL ALSO CONSENT TO THE INSTALLATION OF
09:15:06 23 ANY HARDWARE OR SOFTWARE AS DIRECTED BY THE PROBATION OFFICER
09:15:11 24 TO MONITOR DEFENDANT'S INTERNET USE.
09:15:13 25 THE COURT RECOGNIZES THAT THIS PARTICULAR PROVISION MAY

09:15:19 1 ONLY BE ENFORCEABLE DURING PERIODS OF TIME THAT MR. KALBASI IS
09:15:22 2 IN THE UNITED STATES, BUT SHOULD PROBATION HAVE THE TECHNICAL
09:15:26 3 ABILITY TO IMPOSE THIS PROVISION WHILE MR. KALBASI IS IN
09:15:30 4 TORONTO, THEN THAT WILL BE REQUIRED. IT'S NOT CLEAR THAT THEY
09:15:37 5 WILL HAVE THAT AUTHORITY, BUT TECHNOLOGY MAY PROVIDE THAT.

09:15:41 6 IT IS FURTHER ORDERED THAT THE DEFENDANT SHALL PAY TO THE
09:15:44 7 UNITED STATES A SPECIAL ASSESSMENT OF \$25.00.

09:15:45 8 PAYMENT SHALL BE MADE TO THE CLERK OF THE UNITED STATES
09:15:48 9 DISTRICT COURT: 450 GOLDEN GATE AVENUE, BOX 36060, SAN
09:15:50 10 FRANCISCO, CA 94102.

09:16:02 11 MR. BARTON: CAN THAT BE PAID HERE, YOUR HONOR?

09:16:05 12 THE COURT: YES, IT CAN.

09:16:06 13 THE COURT FINDS THAT THE DEFENDANT DOES NOT HAVE THE
09:16:09 14 ABILITY TO PAY A FINE AND ORDERS IT WAIVED.

09:16:13 15 IT IS FURTHER ORDERED THAT THE DEFENDANT SHALL PAY
09:16:17 16 RESTITUTION TO TESLA, BUT THAT AMOUNT SHALL BE DETERMINED BY
09:16:20 17 THE COURT AT A LATER HEARING AND IS NOT DETERMINED AT THIS
09:16:24 18 TIME.

09:16:24 19 ONCE THE DEFENDANT IS ON PROBATION AND THIS COURT HAS MADE
09:16:27 20 A RESTITUTION ORDER, RESTITUTION MUST BE PAID IN MONTHLY
09:16:31 21 PAYMENTS OF NOT LESS THAN \$100, OR AT LEAST TEN PERCENT OF
09:16:35 22 EARNINGS, WHICHEVER IS GREATER, TO COMMENCE NO LATER THAN
09:16:38 23 60 DAYS FROM THE INSTITUTION -- FROM THE DETERMINATION OF AN
09:16:45 24 AMOUNT OF RESTITUTION OR PLACEMENT ON PROBATION, WHICHEVER IS
09:16:50 25 LATER.

09:16:51 1 ANY ESTABLISHED PAYMENT PLAN DOES NOT PRECLUDE ENFORCEMENT
09:16:54 2 EFFORTS BY THE UNITED STATES ATTORNEY'S OFFICE, IF THE
09:16:57 3 DEFENDANT HAS THE ABILITY TO PAY MORE THAN THE MINIMUM DUE.
09:17:00 4 THE RESTITUTION PAYMENT SHALL BE MADE TO THE CLERK OF THE
09:17:03 5 UNITED STATES DISTRICT COURT: ATTENTION FINANCIAL UNIT. 450
09:17:10 6 GOLDEN GATE AVENUE, BOX 36060, SAN FRANCISCO, CA 94102.
09:17:16 7 MR. KALBASI, YOU MAY APPEAL YOUR CONVICTION CONSISTENT
09:17:19 8 WITH THE WAIVERS IN YOUR PLEA, AND IF YOU FEEL THAT YOUR PLEA
09:17:22 9 WAS SOMEHOW UNLAWFUL OR INVOLUNTARY OR THERE WAS SOME OTHER
09:17:26 10 FUNDAMENTAL DEFECT IN THE PROCEEDING THAT WAS NOT WAIVED BY
09:17:29 11 YOUR GUILTY PLEA.
09:17:30 12 ANY NOTICE OF APPEAL MUST BE FILED WITHIN 14 DAYS OF ENTRY
09:17:34 13 OF JUDGMENT OR WITHIN 14 DAYS OF FILING OF A NOTICE OF APPEAL
09:17:38 14 BY THE GOVERNMENT.
09:17:39 15 IF YOU CANNOT AFFORD TO PAY THE COST OF AN APPEAL, OR FOR
09:17:42 16 AN ATTORNEY TO REPRESENT YOU ON APPEAL, YOU HAVE THE RIGHT TO
09:17:45 17 APPLY FOR LEAVE TO APPEAL IN FORMA PAUPERIS WHICH MEANS THAT
09:17:50 18 YOU CAN ASK THE COURT TO WAIVE THE FILING FEE. ON APPEAL, YOU
09:17:53 19 MAY APPLY FOR COURT APPOINTED COUNSEL.
09:17:56 20 I THINK THAT THE NEXT THING WE NEED TO DO IS SET A RETURN
09:17:59 21 DATE FOR A RESTITUTION HEARING.
09:18:04 22 MS. KNIGHT: YOUR HONOR, JUST AS A HOUSEKEEPING
09:18:06 23 MATTER.
09:18:07 24 THE GOVERNMENT MOVES TO DISMISS COUNTS 1 AND 2 OF THE
09:18:10 25 INDICTMENT.

09:18:10 1 THE COURT: THANK YOU. THAT WILL BE GRANTED.

09:18:12 2 MR. BARTON: I'M WONDERING IF THERE'S ANY

09:18:15 3 CLARIFICATION THE COURT CAN IMPOSE REGARDING THE NO CELL

09:18:18 4 PHONES.

09:18:19 5 DOES THIS PREVENT HIM FROM HAVING A NON-INTERNET ENABLED

09:18:22 6 CELL PHONE? IS HE PROHIBITED FROM EVEN A FLIP PHONE DURING THE

09:18:26 7 TERM OF PROBATION?

09:18:28 8 THE COURT: WHAT IS PROBATION'S DETERMINATION ON

09:18:30 9 THAT?

09:18:30 10 PROBATION OFFICER: I'M SORRY, WHERE IS THAT

09:18:32 11 CONDITION?

09:18:32 12 MR. BARTON: NUMBER 2 SAYS THAT HE CANNOT OWN ANY

09:18:36 13 ELECTRONIC DEVICE CAPABLE OF ACCESSING OR PROCESSING OR STORING

09:18:42 14 DATA, INCLUDING CELL PHONES.

09:18:44 15 AND I KNOW MR. KALBASI HAS AN IPHONE IN HIS POCKET RIGHT

09:18:48 16 NOW AND THAT THAT IS A VIOLATION OF HIS PROBATION. AND I WANT

09:18:55 17 TO TRY TO CLARIFY THIS BEFORE IT BECOMES AN ISSUE.

09:19:00 18 PROBATION OFFICER: YOUR HONOR, PROBATION IS OKAY

09:19:01 19 WITH MR. KALBASI HAVING A CELL PHONE.

09:19:03 20 THE COURT: AND IPHONE WOULD BE ALLOWED THAT CAN

09:19:07 21 ACCESS THE INTERNET.

09:19:08 22 PROBATION OFFICER: YES, YOUR HONOR.

09:19:09 23 MR. BARTON: THANK YOU, YOUR HONOR.

09:19:10 24 THE COURT: OKAY. GOOD.

09:19:11 25 MS. KNIGHT, A RETURN DATE? ARE WE LOOKING AT THE END OF

09:19:26 1 AUGUST?

09:19:27 2 MS. KNIGHT: I WAS LOOKING AT POSSIBILITY

09:19:29 3 AUGUST 22ND.

09:19:29 4 MR. BARTON: I AM UNAVAILABLE THAT WEEK.

09:19:30 5 I RETURN THE FOLLOWING WEEK ON THE -- IS THE FIRST WEEK OF

09:19:35 6 SEPTEMBER AVAILABLE?

09:19:36 7 THE COURT: SURE. THE DAY AFTER LABOR DAY?

09:19:41 8 MR. BARTON: THAT'S FINE.

09:19:42 9 MS. KNIGHT: THAT'S FINE FOR THE GOVERNMENT,

09:19:45 10 YOUR HONOR. SO THAT'S SEPTEMBER 5TH.

09:19:46 11 THE COURT: AND THAT'S OKAY FOR US?

09:19:48 12 THE CLERK: YES, YOUR HONOR.

09:19:49 13 THE COURT: OKAY. IS THAT GOING TO BE A HEARING, IS

09:19:52 14 THAT SOMETHING I NEED TO SPECIALLY SET?

09:19:54 15 MS. KNIGHT: YOUR HONOR, I THINK WE CAN RESOLVE IT ON

09:19:56 16 THE PAPERS. I DON'T THINK WE ARE GOING TO NEED TO HAVE AN

09:19:59 17 EVIDENTIARY HEARING.

09:20:00 18 THE COURT: OKAY. I WILL SET THAT AT 9:00 AND THAT

09:20:03 19 WILL BE ALREADY REGARDING RESTITUTION AND IF TESLA CHOOSES TO

09:20:06 20 SEND A REPRESENTATIVE, I WILL MAKE SURE THAT THERE'S AMPLE

09:20:09 21 OPPORTUNITY TO HEAR FROM TESLA AS WELL. THAT WAS VERY HELPFUL

09:20:12 22 TODAY.

09:20:13 23 MR. BARTON: AND CAN MR. KALBASI BE PERMITTED TO

09:20:15 24 APPEAR TELEPHONICALLY.

09:20:17 25 THE COURT: ANY OBJECTION.

09:20:18 1 MS. KNIGHT: ABSOLUTELY NOT, YOUR HONOR.

09:20:19 2 THE COURT: OKAY. TELEPHONE WILL BE FINE. GOOD.

09:20:21 3 GOOD. I THINK THAT'S FINE.

09:20:24 4 MR. KALBASI, I THINK YOU HAVE ALONG WAY TO GO TO REPAIR

09:20:30 5 THE DAMAGE THAT YOU'VE DONE TO TESLA, PERHAPS YOU CAN REPAY

09:20:36 6 THEM, TO YOUR CAREER, AND TO YOUR FAMILY, I THINK YOU HAVE A

09:20:41 7 LONG WAY TO GO.

09:20:43 8 ALL RIGHT. I THINK THAT'S EVERYTHING FOR THIS MORNING.

09:20:45 9 MS. KNIGHT: YES, YOUR HONOR. THANK YOU.

09:20:46 10 MR. BARTON: THANK YOU, YOUR HONOR.

09:20:47 11 PROBATION OFFICER: THANK YOU.

09:20:48 12 (THE PROCEEDINGS WERE CONCLUDED AT 9:20 A.M.)

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CERTIFICATE OF REPORTER
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8 I, THE UNDERSIGNED OFFICIAL COURT
9 REPORTER OF THE UNITED STATES DISTRICT COURT FOR
10 THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH
11 FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
12 CERTIFY:

13 THAT THE FOREGOING TRANSCRIPT,
14 CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND
15 CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS
16 SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS
17 HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED
18 TRANSCRIPTION TO THE BEST OF MY ABILITY.

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25 SUMMER A. FISHER, CSR, CRR
 CERTIFICATE NUMBER 13185

DATED: 9/12/2017